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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Finite Management LLC, et al.,

10 Plaintiffs,

11 v.

12 OtoPilot LLC, et al.,

13 Defendants.  
14

No. CV-23-02479-PHX-ROS

**ORDER**

15 Plaintiffs filed Motions for Default Judgment against Defendants OtoPilot, LLC and  
16 Daniel Rodriguez (“Defaulted Defendants”) (Docs. 52, 53). Both Defaulted Defendants  
17 have not filed a response. For the reasons set forth below, the Court will grant the motions  
18 in part and deny them in part and direct entry of default judgment against Defendants  
19 OtoPilot, LLC and Daniel Rodriguez in the amount of \$183,336.46.

20 **BACKGROUND**

21 Plaintiffs filed this action alleging Defendants OtoPilot, LLC, Daniel Rodriguez,  
22 and Robert Rodriguez breached numerous agreements and committed fraud with respect  
23 to these agreements. (*See* Doc. 1, “Compl.”). Plaintiffs Finite Management LLC and Finite  
24 Solar Finance Fund are two investment companies in the clean energy industry that extend  
25 loans to small enterprises to finance solar energy projects. (*Id.* ¶ 1). They allege the  
26 following facts in the Complaint. Defendant OtoPilot, LLC, through its principal,  
27 Defendant Daniel Rodriguez, approached Plaintiffs seeking a loan for a solar energy  
28 project. (*Id.* ¶ 2). In November 2022, Finite Solar Finance Fund lent OtoPilot, LLC

1 \$75,000.00 pursuant to a Loan Agreement, accompanied by a Promissory Note and two  
2 Guaranty Agreements. (*Id.*). The Guaranty Agreements, signed by Daniel Rodriguez and  
3 Robert Rodriguez, guaranteed repayment to Plaintiffs. (*Id.*).

4 In August 2023, in connection with the conversion of the Finite Solar Finance Fund  
5 into a private entity, Plaintiff Finite Management LLC and Defendant OtoPilot, LLC  
6 agreed to refinance the outstanding loan with a second loan of \$80,000 that OtoPilot, LLC  
7 would use to immediately repay the first loan. (*Id.* ¶ 3). Plaintiffs allege OtoPilot, LLC  
8 failed to repay any of the outstanding principal on either loan. (*Id.* ¶ 4). Instead, Plaintiffs  
9 allege Daniel Rodriguez absconded with the proceeds of both loans and has evaded their  
10 attempts to locate him. (*Id.*). In pursuing repayment from Robert Rodriguez in September  
11 2023, Plaintiffs were told the original Guaranty Agreement was a forgery that Robert  
12 Rodriguez did not sign himself and had no prior knowledge of the transaction. (*Id.* ¶ 5).  
13 Plaintiffs brought this action on November 29, 2023 seeking a judgment to recover its  
14 unpaid principal and interest pursuant to both loans and tort remedies under claims for  
15 fraudulent inducement. (*Id.* ¶ 7).

16 Plaintiffs executed service upon Robert Rodriguez on January 23, 2024. (Doc. 13).  
17 He filed an Answer on March 7, 2024 stating, in relevant part, that (1) his Employee  
18 Identification Number (EIN) was fraudulently used to obtain financing from Plaintiffs, (2)  
19 he is the victim of identity theft, and (3) Plaintiffs have no verified signed documents with  
20 his signature or mailing address on them. (Doc. 33). Service as to Defaulted Defendants  
21 was executed on June 25, 2024 due to Plaintiffs' delays in complying with service  
22 procedures. (Docs. 43, 46, 47). Defaulted Defendants failed to answer or otherwise  
23 participate in the case. Plaintiffs filed applications for entry of default against Defaulted  
24 Defendants on July 22, 2024. (Docs. 48, 49). The Clerk entered default against both non-  
25 participating defendants the following day. (Doc. 50). On July 26, 2024, Plaintiffs filed  
26 the instant motions for default judgment against Defendants OtoPilot, LLC and Daniel  
27 Rodriguez. (Docs. 52, 53).

## JURISDICTION

When a party seeks default judgment “against a party who has failed to plead or otherwise defend, a district court has an affirmative duty to look into its jurisdiction over both the subject matter and the parties.” *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). The Court has diversity jurisdiction over this action because it is between citizens of different states and the amount in controversy exceeds \$75,000. *See* 28 U.S.C. § 1332. The Court also has personal jurisdiction over Defendants. Plaintiff’s claims arise from Defendant’s alleged conduct purposefully directed into Arizona. (Compl. at ¶¶ 12-13).

## DEFAULT JUDGMENT

Once default is entered, the Court may enter default judgment under Rule 55(b). Deciding to grant default judgment is discretionary and the Court must consider: (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4) the amount in controversy; (5) the possibility of factual dispute; (6) whether the default was due to excusable neglect; and (7) the strong preference to decide cases on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986).

### **I. Factor (1): Prejudice to Plaintiff**

In light of Plaintiffs’ claims that Defendant Daniel Rodriguez absconded with the proceeds of the loan, Plaintiffs have no obvious alternative recourse without a judgment. This factor weighs in favor of default judgment. *See Zekelman Indus. Inc. v. Marker*, No. CV-19-02109-PHX-DWL, 2020 WL 1495210, \*3 (D. Ariz. Mar. 27, 2020).

### **II. Factors (2) and (3): Merits of the Claim and Sufficiency of the Complaint**

The second and third *Eitel* factors, taken together, require courts to consider whether Plaintiffs have stated a claim on which they may recover. *See PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002); *Danning v. Lavine*, 572 F.2d 1386, 1388–89 (9th Cir. 1978). “Of all the *Eitel* factors, courts often consider the second and third factors to be the most important.” *Trident Invest. Partners Inc. v. Evans*, No. CV-20-01848-PHX-DWL, 2021 WL 75826, \*3 (D. Ariz. Jan. 8, 2021) (quoting *Vietnam Reform Party v. Viet Tan-Vietnam Reform Party*, 416 F. Supp. 3d 948, 962 (N.D. Cal. 2019)). In

1 considering these factors, the complaint’s factual allegations are taken as true, but Plaintiffs  
 2 must establish all damages sought. *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th  
 3 Cir. 1977). For the reasons below, these factors weigh in favor of default judgment on all  
 4 claims against Defaulted Defendants.

5 A. Breach of Contract

6 The Complaint alleges breaches of various contracts entered into by Plaintiffs and  
 7 Defendants OtoPilot, LLC and Daniel Rodriguez: the Term Loan Agreement (Count I  
 8 against both Defendants); the Refinancing Agreement (Count II against both Defendants);  
 9 and the Guaranty Agreement (Count III against Defendant Daniel Rodriguez). Because  
 10 the Motions do not apply to Defendant Robert Rodriguez, the Court will not address the  
 11 single claim applicable to him.

12 Under Delaware law<sup>1</sup>, the three elements of a breach of contract claim are (1) a  
 13 contractual obligation, (2) a breach of that obligation, and (3) a resulting damage to the  
 14 plaintiff. *Connelly v. State Farm Mut. Auto. Ins. Co.*, 135 A.3d 1271, 1279 n.28 (Del.  
 15 2016). Plaintiff has sufficiently stated claims for breach of contract with respect to all three  
 16 agreements. The Term Loan Agreement, effective November 29, 2022, was executed  
 17 between OtoPilot, LLC and Finite Solar Finance Fund. (Compl. ¶ 31). Defendants  
 18 allegedly breached the Term Loan Agreement “by failing to pay as agreed, including by  
 19 failing to repay the balance due under the Term Loan Agreement using the proceeds from  
 20 the Refinanc[ing] Agreement.” (*Id.* ¶ 34). Also executed on November 29, 2022 by the  
 21 parties was the Guaranty Agreement which Defendant Daniel Daniel Rodriguez allegedly  
 22 breached “by absconding and thereby refusing to honor the Guaranty Agreement.” (*Id.* ¶  
 23 42, 44). Further, Plaintiffs allege the Refinancing Agreement between Plaintiffs and  
 24 Defendants was a valid, oral contract formed in August 2023, and Defendants OtoPilot,  
 25 LLC and Daniel Rodriguez breached it “by failing to use the proceeds to repay the balance  
 26 due under the Loan Agreement and by failing to pay as agreed.” (*Id.* ¶ 37, 39). As a result  
 27 of Defendants’ breaches, Plaintiffs were harmed in the amount of the outstanding principal

28 <sup>1</sup> The agreements at issue provide they “shall be construed in accordance with, governed  
 by and enforced under the laws of the State of Delaware.” (Compl. at Ex. 1).

1 balance and unpaid interest that continues to accrue, along with the amount of the guaranty  
 2 agreed to. (*Id.* ¶ 35, 40, 45). Plaintiffs attached copies of all three agreements to the  
 3 Complaint. (*Id.* at Exs. 1, 2(a), 2(b)). Accepting Plaintiffs' allegations as true, they are  
 4 sufficient to support multiple claims for breach of contract.

5 ***B. Fraudulent Inducement***

6 The Complaint further alleges two claims of fraudulent inducement against  
 7 Defendants as to the Loan Agreement and Guaranty Agreement (Count V) and the  
 8 Refinancing Agreement (Count VI).

9 Under Delaware law, the elements of fraudulent inducement are “(1) a false  
 10 statement or misrepresentation; (2) that the defendant knew was false or made with reckless  
 11 indifference to the truth; (3) the statement induced the plaintiff to enter the agreement; (4)  
 12 the plaintiff's reliance was reasonable; and (5) the plaintiff was injured as a result.” *In re*  
 13 *Student Fin. Corp.*, 2004 WL 609329, at \*7 (D. Del. Mar. 23, 2004) (citing *Lord v. Sander*,  
 14 748 A.2d 393, 402 (Del. 2000)).

15 Plaintiffs have sufficiently stated claims for fraudulent inducement with respect to  
 16 all three agreements. Plaintiffs alleged Defendant Daniel Rodriguez made oral and written  
 17 representations to Plaintiffs that Robert Rodriguez would execute the Guaranty Agreement.  
 18 (Compl. at ¶¶ 52-53). These representations were false and material because Plaintiffs  
 19 would not have executed the Loan Agreement without the simultaneous execution of the  
 20 Guaranty Agreement with Robert Rodriguez. (*Id.* at ¶ 55). Moreover, Daniel Rodriguez  
 21 allegedly knew the statements were false and forged Robert Rodriguez's signature on the  
 22 Guaranty Agreement on November 29, 2022. (*Id.* at ¶ 56). Daniel Rodriguez intended that  
 23 Plaintiffs rely on his representations, and they did in fact rely on them, causing Plaintiffs  
 24 injury. (*Id.* at ¶ 57-59). The same is true with respect to the Refinancing Agreement. (*Id.*  
 25 at ¶ 62-70). Accepting Plaintiffs' allegations as true, they are sufficient to support multiple  
 26 claims for fraudulent inducement.

27 **III. Factor (4): Amount in Controversy**

28 Returning to the *Eitel* factors, the next factor is the sum of money at stake. This

factor requires the court to consider the amount of money at stake in relation to the seriousness of Defendants' conduct. *PepsiCo*, 238 F. Supp. 2d at 1176. Plaintiffs seek \$871,009.31 in damages, comprising of unpaid loan principal and accrued interest, pre-judgment interest, costs, punitive damages, and attorney's fees. (Mot. at 1) "When the money at stake in the litigation is substantial or unreasonable, default judgment is discouraged." *Zekelman Indus. Inc. v. Marker*, No. CV-19-02109-PHX-DWL, 2020 WL 1495210, \*4 (D. Ariz. Mar. 27, 2020) (quoting *Bd. of Trustees v. Core Concrete Const., Inc.*, 2012 WL 380304, \*4 (N. D. Cal. 2012)). This factor weighs against default judgment because the sum of money requested by Plaintiffs is exorbitant in relation to the value of the contracts.

#### **IV. Factor (5): Dispute Concerning Material Facts**

Defendants failed to respond to the factual allegations in the Complaint. "Because upon entry of default, all well-pleaded facts in the complaint are taken as true, the fifth factor weighs in favor of default judgment when the claims in the complaint are well-pleaded." *Durland v. Straub*, Case No. 3:20-cv-00031-IM, 2022 WL 2704169, at \*7 (D. Or. July 12, 2022). This factor supports default judgment.

#### **V. Factor (6): Excusable Neglect**

There is no evidence in the record to suggest that Defaulting Defendants' failure to appear was the result of excusable neglect. Defaulting Defendants failed to file an answer or otherwise participate in the case despite being properly served. This factor supports default judgment.

#### **VI. Factor (7): Policy Favoring Judgment on the Merits**

This factor generally weighs against default judgment. *See Zekelman Indus. Inc.*, 2020 WL 1495210, at \*4. This is particularly true when a claim against a non-defaulting defendant remains. *Deveraux v. Sison*, 2020 WL 5725183, at \*1 (D. Ariz. Sept. 23, 2020) (citing *Frow v. De La Vega*, 82 U.S. 552, 554 (1872) (stating a court should not enter judgment until the matter with all similarly situated defendants is adjudicated in order to avoid incongruous judgments). Here, however, while a breach of contract claim against

1 Defendant Robert Rodriguez will remain after judgment is entered against Defaulted  
 2 Defendants, there is no possibility of a future incongruous judgment because Robert  
 3 Rodriguez and Defaulted Defendants are not similarly situated in their positions. The claim  
 4 against Robert Rodriguez was alternatively pled.

5 Robert Rodriguez asserts his signature was forged on the Guaranty Agreement.  
 6 Indeed, Plaintiffs may not recover on both the fraudulent inducement claim against  
 7 Defaulted Defendants and the breach of contract claim against Robert Rodriguez. The  
 8 election of remedies doctrine provides that a party who has two co-existing but inconsistent  
 9 remedies and elects to pursue one remedy to a conclusion may not sue for the other remedy.  
 10 25 AM. JUR. 2D *Election of Remedies* § 1. By moving for default judgment on the  
 11 fraudulent inducement claim against Defaulted Defendants, Plaintiffs have elected their  
 12 remedy. *See Roul v. George*, No. 2:13-CV-01686-GMN, 2014 WL 1308607, at \*4 (D.  
 13 Nev. Mar. 10, 2014), *report and recommendation adopted*, No. 2:13-CV-01686-GMN,  
 14 2014 WL 1305044 (D. Nev. Mar. 28, 2014) (“To the extent that claims alternatively pled  
 15 give rise to the same damages, plaintiffs may only make a single recovery, with the court  
 16 having the ultimate authority to elect between the alternative theories.”). Thus, Plaintiffs  
 17 shall show cause as to why the breach of contract claim against Defendant Robert  
 18 Rodriguez (Count IV) should not be dismissed in light of this order granting default  
 19 judgment on Plaintiffs’ fraudulent inducement claim (Count V), pled alternatively, and the  
 20 election of remedies doctrine. *See* 25 AM. JUR. 2D *Election of Remedies* § 6 (“If a party  
 21 has obtained full satisfaction of judgment by means of one remedy, then, under the doctrine  
 22 of election of remedies, it can no longer seek alternative ones that were originally  
 23 available.”).

## 24 **VII. Conclusion**

25 The relevant *Eitel* factors support entering default judgment in this case. The Court  
 26 will grant Plaintiffs’ motion and enter default judgment accordingly.

## 27 **DAMAGES**

28 As noted above, a movant for default judgment must establish all damages sought



1 in the Complaint. *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). “[A]  
 2 default judgment for money may not be entered without a hearing unless the amount  
 3 claimed is a liquidated sum or capable of mathematical calculation.” *Davis v. Fendler*, 650  
 4 F.2d 1154, 1161 (9th Cir. 1981). Plaintiffs seek compensatory damages, punitive damages,  
 5 and attorneys’ fees and costs in the sum of \$871,009.31. The Court will discuss each  
 6 category in turn.

### 7 **I. Compensatory Damages**

8 Plaintiffs seek the unpaid loan principal amount of \$161,000.00 (\$81,000.00 under  
 9 the Loan Agreement and the Guaranty Agreements and \$80,000.00 under the Refinancing  
 10 Agreement) and pre-judgment interest at the contract rate of 12% per annum, *i.e.*, a daily  
 11 rate of \$52.93 from September 6, 2023 to the day judgment is entered.

12 Delaware law provides “the standard remedy for breach of contract is based on the  
 13 reasonable expectations of the parties that existed before or at the time of the breach.” *Siga*  
 14 *Tech., Inc. v. PharmAthene, Inc.*, 132 A.3d 1108, 1132-33 (Del. 2015). These damages  
 15 “are designed to place the injured party ... in the same place as he would have been if the  
 16 contract had been performed. Such damages should not act as a windfall.” *Paul v. Deloitte*  
 17 *& Touche, LLP*, 974 A.2d 140, 146 (Del. 2009). Accordingly, “the non-breaching party is  
 18 entitled to recover ‘damages that arise naturally from the breach or that were reasonably  
 19 foreseeable at the time the contract was made.’” *Id.* (internal citation omitted).

20 Plaintiffs are entitled to compensatory damages in amount of the outstanding  
 21 balances owed to them under the Term Loan Agreement and the Refinancing Agreement  
 22 (\$161,000.00), plus interest at the daily rate of \$52.93 for 422 days<sup>2</sup> pursuant to the  
 23 contracts (\$22,336.46). Together, Plaintiffs shall be awarded compensatory damages in  
 24 the sum of \$183,336.46.

### 25 **II. Punitive Damages**

26 Plaintiffs also seek punitive damages in the sum of \$644,000.00 in connection with  
 27 their fraudulent inducement causes of action that Defendants acted “wantonly, recklessly,

28 <sup>2</sup> This is the number of days between September 6, 2023 (the date of breach) and November 1, 2024 (the date of default judgment entry).



1 with ill-will and with reckless indifference to the rights of [Plaintiffs].” This amount is  
 2 four-times the requested award of compensatory damages.

3 Under Delaware law, “[p]unitive damages are only awarded in situations of ‘willful  
 4 and outrageous’ conduct that flows from ‘evil motive or reckless indifference to the rights  
 5 of others.’” *Lincoln Nat. Life Ins. Co. v. Snyder*, 722 F. Supp. 2d 546, 566 (D. Del. 2010)  
 6 (internal citation omitted); *see Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1076–77  
 7 (Del. 1983) (stating punitive damages may be recover in tort “[i]f the fraud is gross,  
 8 oppressive, or aggravated, or where it involves breach of trust or confidence”). Delaware  
 9 courts refer to the RESTATEMENT (SECOND) OF TORTS in framing the punitive damages  
 10 analysis. *See Jardel Co. v. Hughes*, 523 A.2d 518, 529 (Del. 1987) (citing RESTATEMENT  
 11 (SECOND) OF TORTS § 908) (noting the dual purpose of punitive damages reflected in the  
 12 Restatement).

13 Under the Restatement, courts, in assessing punitive damages, may consider (1) the  
 14 character of the defendant’s act, (2) the nature and extent of the harm to the plaintiff caused  
 15 by the defendant, and (3) the wealth of the defendant. RESTATEMENT (SECOND) OF TORTS  
 16 § 908. “Within that framework, courts have discretion in determining an appropriate  
 17 punitive damages award on default judgment.” *Stewart Title Guar. Co. v. 2485 Calle Del*  
 18 *Oro, LLC*, 2018 WL 3222610, at \*22 (S.D. Cal. June 19, 2018). Deterring future conduct  
 19 is a primary motivator in awarding punitive damages. *Id.* “The wealth of the defendant is  
 20 also relevant, since the purposes of exemplary damages are to punish for a past event and  
 21 to prevent future offenses, and the degree of punishment or deterrence resulting from a  
 22 judgment is to some extent in proportion to the means of the guilty person.” RESTATEMENT  
 23 (SECOND) OF TORTS § 908 (Comment (e)). The award of punitive damages may be  
 24 considered in proportion to the award of compensatory damages, but courts must bear in  
 25 mind that “compensatory damages have already made the victim ‘whole.’” *Malcolm v.*  
 26 *Little*, 295 A.2d 711, 714 (Del. 1972).

27 Here, Plaintiffs provide no additional information in their motions for default  
 28 judgment to support an award of punitive damages. Specifically, the Court lacks

1 information regarding the wealth of OtoPilot, LLC or Daniel Rodriguez to assess whether  
 2 punitive damages requested is appropriate or too much to deter Defendants from breaching  
 3 contracts or committing fraud in the future. *See Stewart Title Guar. Co.*, 2018 WL  
 4 3222610, at \*22 (declining to award punitive damages when information on wealth of  
 5 Defendants and deterrence was not provided). Given the undeveloped factual record by  
 6 Plaintiffs, the requested punitive damages award is unwarranted. Compensatory damages  
 7 are sufficient to make Plaintiffs whole. *See Malcolm*, 295 A.2d at 714.

### 8 **III. Attorneys' Fees and Costs**

9 Plaintiffs seek \$48,457.50 in attorneys' fees and \$402.00 in costs. A grant of  
 10 attorneys' fees and costs is proper upon filing a post-judgment motion for fees in strict  
 11 compliance with Local Rule of Civil Procedure 54.2. If Plaintiffs decide to file a separate  
 12 motion for fees, Plaintiffs are advised a declaration of attorneys stating their hourly rate  
 13 and hours expended on the matter is insufficient to comply with LRCiv 54.2. Rather, they  
 14 must provide task-based itemized statements pursuant to LRCiv 54.2(e), among other  
 15 things.

16 Accordingly,

17 **IT IS ORDERED** Plaintiffs' Motions for Default Judgment (Docs. 52, 53) are  
 18 **GRANTED IN PART** and **DENIED IN PART**. The Clerk of Court is directed to enter  
 19 judgment in favor of Plaintiffs and against Defendants OtoPilot, LLC and Daniel  
 20 Rodriguez in the amount of \$183,336.46 in damages. This amount shall be subject to post-  
 21 judgment interest at the applicable federal rate pursuant to 28 U.S.C. § 1961(a).

22 **IT IS FURTHER ORDERED** Plaintiffs shall show cause as to why the breach of  
 23 contract claim against Defendant Robert Rodriguez (Count IV) should not be dismissed in  
 24 light of this order granting default judgment on Plaintiffs' fraudulent inducement claim  
 25 (Count V), pled alternatively, and the election of remedies doctrine in a memorandum to  
 26 be filed no later than **November 8, 2024**.

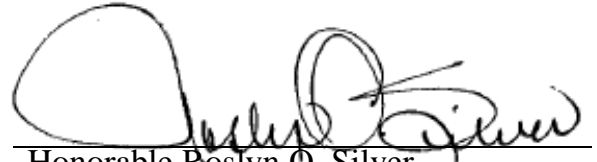
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1           **IT IS FURTHER ORDERED** Plaintiffs may file a motion for attorneys' fees  
2 pursuant to LRCiv 54.2 no later than **November 15, 2024**.

3           Dated this 1st day of November, 2024.

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Honorable Roslyn O. Silver  
Senior United States District Judge